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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/717,423	11/19/2003	Matthew Leroy Gomez	Gomez - BSLGCD	7767

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Matthew L. Gomez
P.O. Box 2745
Rock Springs, WY 82902

EXAMINER

FISCHMANN, BRYAN R

ART UNIT	PAPER NUMBER
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3618

DATE MAILED: 10/07/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/717,423

Applicant(s)

GOMEZ, MATTHEW LEROY

Examiner

Bryan Fischmann

Art Unit

3618

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 November 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 November 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 11-19-03.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____.

Specification

1. The abstract of the disclosure is objected to because of the following:
 - A) The abstract is too long. Per 37 CFR 1.72 and Section 608.01(b) of the MPEP, the abstract shall not exceed 150 words in length. The Instant Abstract is approximately 208 words long.
2. The disclosure is objected to because of the following:
 - A) The meaning of "damaging the attachable part" in the last line of page 15 is considered unclear.

Drawings

3. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the bracing means that secures a load to a bicycle style large game carrying device as recited in claims 1, 10 and 19 must be shown or the feature canceled from the claim. No new matter should be entered.

See also the claim objection portion of this Office Action for further discussion of this objection.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure

Art Unit: 3618

is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Objections

4. Claims 1-20 objected to because of the following:

A) Claim 1 recites "...a bracing means that secures a load to said bicycle style large game cart...".

As best understood, the "bracing means" is reference number 32. However, note that reference number 32 is a "tie down" that does not actually "secure" a load, but merely provides a "point of securement" for a "securing device", such as a Bungee cord, or rope.

See also a similar recitation in claims 10 and 19.

B) While not strictly objectionable, the last lines of claim 1 which read "...said bicycle style large game carrying device is completely unique and beneficial design" seems to be "opinion" or "commentary" be Applicant, as opposed to a structural,

Art Unit: 3618

functional or intended use limitation. Generally only structural, functional and intended use limitations appear in apparatus claims. Note that since the above limitation only expresses opinion and commentary, that no patentable weight is given to the above recited limitation.

See also a similar recitation in claim 10.

C) Claim 9 recites "bracing means are attached to said upright rigid frame". Note that this recitation implies there are a "plurality" of bracing means. Note that Claim 9 is dependant upon claim 1. Note that claim 1 recites "a bracing means", which implies only one bracing means. Due to this, the above claim 9 recitation is objected to, as being inconsistent with claim 1.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

Art Unit: 3618

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

6. Claims 1, 10 and 19 are rejected under 35 U.S.C. 102(e) as being anticipated by Applicant's admission of Prior Art in Claim 1.

Note that claim 1 is written in "Jepson format", where the Applicant has admitted that all structural, functional and intended use limitations in claim 1 are old and well known. Note that claims 10 and 19 contain the same limitations, sometimes with slightly modified wording. See Section 2129 of the MPEP.

Regarding claim 19, it is the Examiner's position that Applicant's admission of Prior Art in claim 1 anticipates the claimed method because the method is inherently disclosed. The rationale for this inherency is that the prior art device, in its normal and usual operation, would necessarily perform the claimed method. See MPEP §2112.02. See *In re King*, 801 F.2d 1324, 1326; 231 USPQ 136, 138 (Fed. Cir. 1986).

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

Art Unit: 3618

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 1-8 and 10-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over McGirl, et al, US Patent 2,284,333, in view of Latta, US Patent 5,195,394.

McGill teaches a bicycle style large game carrying device (see comment below) comprising an upright rigid frame (A) having rotatable wheels (E and E') mounted thereunder, a means for steering (D') said bicycle style large game carrying device, a means for securing a load to said upright rigid frame (hole formed by A – see also claim objection regarding this limitation).

McGill fails to teach a means for stopping or slowing said rotatable wheels.

However, it is old and well known to utilize brakes on a front and rear wheel of a bicycle that are “activated” by levers mounted on a bicycle handlebar. Latta provides a teaching of this (see reference numbers 66, 68 and Figure 1). Brakes on a front and rear wheel of a bicycle are advantageous in that they allow the rider to stop or slow the bicycle. The brake hand levers (66 and 68) are a convenient location for the rider to “actuate” the brakes.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to utilize brakes on the bicycle style large game carrying device of McGill, as taught by Latta.

Regarding the claim 1 and 10 limitation “large game carrying device”, it is noted this limitation is drawn toward “intended use” of the claimed invention. The functional

Art Unit: 3618

recitation of intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the function or intended use, then it meets the claim. *In re Casey*, 370 F.2d 576, 152 USPQ 235, 238 (CCPA 1967). It is the Examiner's position that the prior art is capable of performing the intended use.

Once this prima facie case has been established, the burden shifts to the applicant to show that the prior art structure does not possess the functionally defined or intended use limitations of his claimed apparatus. *In re Schreiber*, 128 F.3d 1473, 44 USPQ2d 1429, 1432 (Fed. Cir. 1997).

Regarding claims 2 and 11, see line 14 of column 2 of page 1 of McGirl.

Regarding claim 3, the "opposite sides" are the forward and after sides.

Regarding claims 4, 5, 13 and 14, the front axle "may be released" by disassembly. Also regarding claims 14 and 15, note that the handlebars of McGirl "steer" the front wheel.

Regarding claims 7, 8, 16 and 17, see reference numbers 66, 68 and Figure 1 of Latta.

Regarding claim 12, see the upper flat portion of the frame of McGirl.

9. Claims 1-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Reynolds, US Patent 404,562, in view of Latta, US Patent 5,195,394.

Reynolds teaches a bicycle style large game carrying device (see comment below) comprising an upright rigid frame (including D and E) having rotatable wheels (B)

Art Unit: 3618

mounted there-under, a means for steering (Figure 2) said bicycle style large game carrying device, a means for securing a load to said upright rigid frame (s and v).

Reynolds teaches a means for stopping or slowing the front wheel (lines 56-58 of page 2) but fails to teach a means for stopping or slowing the rear wheel.

However, it is old and well known to utilize "caliper-type" brakes on both a front and rear wheel of a bicycle that are "activated" by levers mounted on a bicycle handlebar. Latta provides a teaching of this (see reference numbers 66, 68 and Figure 1). Caliper-type brakes on a both a front and rear wheel of a bicycle are advantageous in that they allow the rider to stop or slow the bicycle promptly, without damaging the tires. The brake hand levers (66 and 68) are a convenient location for the rider to "actuate" the brakes. The brakes of Latta are advantageous over the front brake of Reynolds, as the front brake of Reynolds would lead to wear of the tire.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to utilize caliper-type brakes on both wheels of the bicycle style large game carrying device of Reynolds, as taught by Latta.

Regarding the claim 1 and 10 limitation "large game carrying device", it is noted this limitation is drawn toward "intended use" of the claimed invention. The functional recitation of intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the function or intended use, then it meets the claim. *In re Casey*, 370 F.2d 576, 152

Art Unit: 3618

USPQ 235, 238 (CCPA 1967). It is the Examiner's position that the prior art is capable of performing the intended use.

Once this prima facie case has been established, the burden shifts to the applicant to show that the prior art structure does not possess the functionally defined or intended use limitations of his claimed apparatus. *In re Schreiber*, 128 F.3d 1473, 44 USPQ2d 1429, 1432 (Fed. Cir. 1997).

Regarding claims 2 and 11, note also that it is considered within the skill level of one of ordinary skill in the art to select a material based on its intended use. See *In re Leshin*, 125 USPQ 416. A strong and lightweight material such as aluminum, or a composite material is an advantageous material for the frame, as either material is corrosion resistant, is lightweight, which lessens a rider's burden to propel the vehicle and either material is relatively strong to resist plastic deformation or fatigue failure.

Regarding claim 3, the "opposite sides" are the forward and after sides.

Regarding claims 4, 5, 13 and 14, the front axle "may be released" by disassembly. Also regarding claims 14 and 15, note that the handlebars of Reynolds "steer" the front wheel.

Regarding claims 7, 8, 16 and 17, see reference numbers 66, 68 and Figure 1 of Latta.

Regarding claim 9, see reference characters "s" and "v" of Reynolds.

Regarding claim 12, see reference character "D".

10. Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Applicant's admission of Prior Art in Claim 1.

Art Unit: 3618

Applicant's admission of Prior Art in Claim 1, as applied to claim 19, fails to explicitly state that the rigid frame is composed of a strong and lightweight material.

However, note also that it is considered within the skill level of one of ordinary skill in the art to select a material based on its intended use. See *In re Leshin*, 125 USPQ 416. A strong and lightweight material such as aluminum, or a composite material is an advantageous material for the frame, as either material is corrosion resistant, is lightweight, which lessens a rider's burden to propel the vehicle and either material is relatively strong to resist plastic deformation or fatigue failure.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to a strong lightweight material for the frame of the bicycle style large game carrying device of Applicant's admission of Prior Art in Claim 1.

Regarding the method of claim 20, see the comments regarding the method of claim 19 in 102 rejection of claim 19.

Conclusion

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

A) Smith, Allen, Saladee, Fogle, Maebe, Allsop – teach wheeled vehicles capable of transporting game

Art Unit: 3618

12. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Bryan Fischmann whose telephone number is (703) 306-5955. The examiner can normally be reached on Monday through Friday from 9:00 to 5:30.

If attempts to reach the Examiner by telephone are unsuccessful, the examiner's supervisor, Chris Ellis, can be reached on (703) 308-2560. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

 10-4-4
BRYAN FISCHMANN
PRIMARY EXAMINER